CF0000063041

(2)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR(MP)

CRIMINAL APPEAL 995 /2000.

Single Bench (Criminal)

APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE.

APPELLANT/
(In Jail) : Basant Rao son of Laxman Rao,
aged about 55 years,
Resident of Tilak Nagar, Bilaspur(MP).

-Versus-

RESPONDENT : The State of M.P.

(15)

Criminal Appeal No.995/2000

Basant Rao

vs.

State of M.P. (C.G.)

J U D G M E N T

Post for : 21-8-2001.

Sd/-
R.S. Garg
Judge

Members
GA 21/8/2001

(Rahul Ajay)
R.N.J.
Consultant
Appellant
21-08-2001

(16)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO.995/2000

Basant Rao

vs.

State of M.P. (C.G.)

JUDGMENT

Per Hon.R.S.Garg,J :

Appellant Basant Rao being aggrieved by the judgment dated 25-2-2000 passed in Special Case No.52/99 by the learned Special Judge(N.D.P.S.),Bastar(Jagdalpur) convicting the appellant under Section 20(b)(i) of the Narcotic Drugs & Psychotropic Substances Act, sentencing him to undergo R.I. for 3 years and pay fine of Rs.10,000/-, in default of payment of fine to undergo further R.I. for one year, has filed this appeal.

2. The prosecution case in brief is that A.S.I. Tilu Singh (P.W.7), under the directions of his Superior was checking the vehicles. At that time bus no. M.P.25/0319 reached forest produce barrier, said T.S. Thakur stopped the bus and started checking the same. On seat no.14, the appellant accused was sitting with two bags and one sling bag. Developing certain suspicions, said T.S. Thakur made inquiries about the contents of the said articles. The accused admitted before him that he was carrying ganja. After receiving the said information from the accused, T.S. Thakur gave him a notice under Section 50 of the N.D.P.S. Act and required the accused to exercise his option for his search either before a gazetted officer or a Magistrate First Class or by the officer-in-charge. The accused

consented for the search being taken by said T.S. Thakur. Before taking the search, T.S. Thakur and his staff gave their own search. Thereafter, the two bags and the sling bag were searched. 16 kg., 10 kg. and 5 kg. ganja was recovered from the three bags. After taking the said contraband into custody, T.S. Thakur took out the samples of 30 gms. each from those bags, sealed the bags and the samples. After giving the information to the accused of the reasons for his arrest, the accused was arrested. An information relating to the arrest was sent to the relations of the accused. A dehati nalish was registered on the spot. Said T.S. Thakur brought the said articles and the accused to police station, Jagdalpur where the F.I.R. was registered at zero number, thereafter the said first information report was sent to police station-Bodhghat where a numbered first information report was registered. The said articles and the samples were kept in malkhana and with the permission of the Superintendent of Police, Jagdalpur the samples were sent for their analytical report. The laboratory certified that the samples were of ganja. The investigating agency prepared different panchnamas, recorded the statements of the witnesses and after being satisfied that the accused had committed the offence, filed the challan against him. The accused was put to trial as he had denied the commission of the offence. After recording the evidence and hearing the parties, the learned trial court convicted and sentenced the accused as aforesaid.

3. Being aggrieved by the said conviction and sentence, the appellant has preferred this appeal.

(18)

4. Shri R.N.Jha, learned counsel for the appellant, submits that the prosecution has failed to prove compliance of Sections 42, 50 and 57 of the Act, therefore, and as the independent witnesses have not supported the statements of P.W.7 T.S.Thakur, the accused deserves to be acquitted.

5. On the other hand, Shri Ranveer Singh, learned Govt.Advocate, has submitted that the provisions were fully complied with and even if the independent witnesses have not supported the case of the prosecution, the same would not make any difference unless it is proved by the defence that P.W.7 T.S. Thakur was inimical to him, and was interested in prosecuting him. He submits that the prosecution was successful in bringing home the guilt and the court below was justified in convicting the appellant.

6. Section 42 of the Act requires that if the officer receives an information about the contrabands, then he is required and obliged to record the information and send a copy of the same to his superior officers. In the present case, from the statements of P.W.7 T.S. Thakur it would clearly appear that he was on a routine patrol/check and on inquiries he was informed by the accused himself that the accused was possessing ganja. Present is not a case where P.W.7 T.S. Thakur received the information from some informant or had some personal knowledge about the accused or that the accused was possessing ganja. In the circumstances of the present case, non-compliance of Section 42 of the Act would not arise because there was no occasion for P.W.7 T.S.Thakur to record the

information or send the same to his officer superior because he never received any information from any informant.

7. So far as non-compliance of Section 50 of the Act is concerned, the argument can straight-way be rejected because present is not a case where P.W.7 T.S.Thakur had some information or personal knowledge that accused was carrying ganja. From the facts, it would appear that T.S. Thakur casually inquired from the accused about the contents of the bag and the accused in his turn informed him that the said three bags contained ganja. The Supreme Court has clearly observed that in a case where a routine check/search is going on, then pre-compliance of Section 50 of the Act is not necessary but the moment the authorised officer comes to know that the accused is possessed of ganja, then he is required to observe the provisions of Section 50 thereafter. In the present case, immediately after learning that the accused was carrying ganja, P.W.7 T.S. Thakur had issued the notice Ex.P/6 to the accused. From a perusal of Ex.P/6, it would clearly appear that T.S. Thakur had given options to the accused in accordance with law. From Ex.P/6, it would clearly appear that a copy of the notice was received by the accused and the accused gave his consent for his search by P.W.7. True it is that independent witnesses have not supported P.W.7 T.S. Thakur on material counts but the quantity of ganja would dispel every suspicion or doubt. The quantity of ganja recovered from the accused would show that he was carrying ganja which was about 31 kg.

8. Section 57 of the Act provides that after effecting the seizure and arrest of the accused, the officer effecting the ~~xxxxxx~~ seizure and making arrest is required to inform his official superior about the seizure and arrest. In the present case, from Ex.P/17, it would clearly appear that P.W.7 T.S. Thakur had sent the information to the Superintendent of Police. From the documents, it would also appear that the bags and the samples were properly sealed. It would also appear from the statements of P.W.7 T.S. Thakur and from the statements of P.W.4 Joshi that on 5-5-1999 said Joshi received three sealed bags and samples in sealed conditions. The said articles were kept in police malkhana and under the directions of S.P. Jagdalpur the samples were sent to the F.S.L. on 11-5-1999. The submission of the learned counsel for the appellant that whereabouts of the samples between 4-5-99 to 11-5-99 is not known to anybody, cannot be accepted. The F.S.L. report is available at Ex.P/4. From the report, it would clearly appear that the samples were of ganja.

9. P.W.7 T.S. Thakur has clearly stated that while he was checking the bus he inquired from the accused and after receiving the information from the accused that he was carrying ganja the witness immediately served him with a notice under Section 50 of the Act. From the statements of P.W.2 T.P.Naidu it would appear that the accused was boarded down from the bus and at the same time the bags were opened and ganja was found in the said bags. From the statements of P.W.3 Pradeep Devangan, it would again appear that after seizure of the articles it was weighed in a shop.

10. The submission of the learned counsel that as the independent witnesses have not supported the prosecution story the accused is entitled to be acquitted cannot be accepted because it is not the quantity of the witnesses but it is the quality of the statements of the witnesses which persuade a Court to record a finding this way or that way. In the present case, nothing has been brought on record to show that P.W.7 T.S. Thakur was inimical to the accused or had an axe to grind against him or was acting with vengeance. The quantity of ganja would certainly rule out every possibility of plantation or false implication.

11. After going through the entire record, I am unable to hold that the court below was unjustified in convicting the accused. Concurring with the findings recorded by the court below, I hold that the accused was carrying 31 kg. of ganja with him and the prosecution has proved compliance of every mandatory provision of N.D.P.S. Act.

12. Shri Jha had lastly submitted that the accused appears to be in jail since 4-5-1999 and by now he has physically undergone two years and 3½ months sentence and must have also earned about four months remission, therefore, the sentence be reduced to the period already undergone.

13. Taking into consideration the totality of the circumstances and the fact that by now the accused must have undergone two years and seven months sentence, I consider present to be a fit case where the jail sentence deserves to be reduced to the period already undergone.

14. While maintaining the fine amount and the default sentence, I reduce the jail sentence to the period already undergone. If the accused deposits the fine amount of Rs.10,000/-, then he shall immediately be released, if not required in any case but if he does not deposit the fine amount then he shall undergo R.I. for one year.

15. The appeal is allowed to the extent indicated above.

Sd/-
R.S. Garg
Judge

21-8-2001.

H/-
(1+2)